

E-FILED 4/1/2009

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ADEL PORTILLO and EDIEL LOPEZ,

No. C08-00190 HRL

Plaintiffs,

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

v.

NADER SARNEVESLIT aka NADER
SARNEVESHT doing business as PACIFICA
CONSTRUCTION, BOBBY SARNEVESHT,
JAVAD ZOLFAGHARI, SILICON VALLEY
CENTER FOR SPORTS MEDICINE LLC,

[Re: Docket No. 46]

Defendants.

Plaintiffs brought this action, alleging one claim for violation of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, et seq., as well as several other claims for violations of state law. This court granted defendants' Fed. R. Civ. P. 12(b)(6) motion to dismiss the FLSA claim with leave to amend. Having dismissed the sole basis for federal jurisdiction, this court declined to exercise supplemental jurisdiction over plaintiffs' state law claims and dismissed them without prejudice.

Once again, defendants move to dismiss this action – this time on the ground that plaintiffs failed to file their amended pleading by the court-ordered deadline. Indeed, plaintiffs now advise that they have no intention of amending their complaint to state any federal claims and have instead decided to pursue only their state law claims in state court. They oppose


1 defendants' motion to dismiss in "abundance of caution" and only to the extent that the motion
2 seeks to dismiss their state law claims with prejudice. Defendants confirm that is not the intent
3 of their motion; and, as discussed above, plaintiffs' state law claims have already been
4 dismissed (without prejudice) for lack of subject matter jurisdiction. In sum, plaintiffs perceive
5 controversy where there is none.

6 Because plaintiffs now confirm that they have no intent of pursuing any federal claims,
7 defendants' motion to dismiss this action is granted and plaintiffs' FLSA claim is dismissed
8 with prejudice. Defendants' request for sanctions is denied. The motion hearing noticed for
9 April 7, 2009 is vacated.

10 The clerk shall enter judgment and close the file.

11 Dated: April 1, 2009

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HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

5:08-cv-190 Notice has been electronically mailed to:

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Counsel are responsible for distributing copies of this document to co-counsel who have not registered for e-filing under the court's CM/ECF program.